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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,665	05/18/2001	Robert Cosmo Di Luccio	KCC-15,512	3343

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/17/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/859,665

Applicant(s)

LUCCIO ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-25, 27-42, 44 and 46-48 is/are rejected.
- 7) ☒ Claim(s) 26, 43, 45, 49 and 50 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-3, 5, 6, 8, 9, 14-16, 18-21, 27, 32, 38-40, 44, and 46-48 are rejected under 35 U.S.C. 102(e) as being anticipated by Gagliardi et al. (6,245,693).

With respect to claims 1, 2, 5, 12, 21, 27, 32, and 46, Gagliardi discloses the use of an absorbent structure 14 which can be incorporated into a sanitary napkin (column 7, lines 32-37) and contains a treatment chemistry such as an ionically crosslinked gelling material 26 (column 6, lines 3-11) which functions to absorb menses, control pH, and absorb odor.

With respect to claims 3 and 16: See Gagliardi, column 10, lines 17-26.

With respect to claims 6, 44, 47, and 48: See Gagliardi, figures 1 and 2.

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With respect to claims 8, 9, and 14: See Gagliardi, column 7, lines 38-52.

With respect to claims 18-20 and 38-40: See figures 1 and 2, and column 7, lines 38-67.

Claims 1-6, 8-12, 15-17, 21-25, 27-37, 41, 44, and 46-48 are rejected under 35 U.S.C. 102(e) as being anticipated by Tanzer et al. (5,782,81.9).

With respect to claims 1, 2, 4, 5, 15, 17, 21, 27, 28, 30, 32, 35, 41, and 46, Tanzer discloses the use of an absorbent article with a topsheet, backsheet, and absorbent core, as shown in figures 1-8, which can be employed as a sanitary napkin (column 2, lines 55-58). Tanzer discloses the core containing an ionically crosslinked gelling agent (column 8, lines 8-20).

With respect to claims 3 and 16: See Tanzer, column 8, lines 47-53.

With respect to claims 6, 44, 47, and 48: Tanzer discloses the gelling agent being located through the core, which the examiner considers to be along the periphery and at the center of the core (column 7, lines 51-53).

With respect to claims 8, 9, 22, and 36: See Tanzer, column 7, lines 47-53.

With respect to claim 10: See Tanzer, column 7, lines 54-67.

With respect to claims 11, 24, 25, 29, 33, and 34: Tanzer discloses the use of meltblown fibrous nonwoven material (column 7, lines 4-51).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanzer et al. as applied to claims 1 and 32 above, and further in view of Beihoffer et al. (6,159,591).

Tanzer discloses the use of superabsorbents which are ionically crosslinked gelling agents, but fails to disclose the use of a multi-component fiber. Beihoffer discloses the use of a multi-component superabsorbent fiber that can be used for sanitary purposes (column 1, lines 12-33). It would have been obvious to one of ordinary skill in the art at the time of invention to have the superabsorbents of Tanzer comprise a multi-component superabsorbent fiber, as taught by Beihoffer, to provide a superabsorbent particle that has a high absorption rate, good permeability and gel strength, overcomes the salt poisoning effect, and demonstrates an improved ability to absorb and retain liquids (See Beihoffer, column 4 and 5).

#### ***Allowable Subject Matter***

Claims 26, 43, 45, 49, and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed 03 July 2003 have been fully considered but they are not persuasive. Both Tanzer et al. and Gagliardi et al. disclose an ionically crosslinked gelling agent (See Tanzer, column 8, lines 14-20; Gagliardi, column 6, line 11).

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***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

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WA

cla

September 9, 2003

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